



U.S. Department of Justice

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April 22, 2010

MEMORANDUM OF PLEA NEGOTIATIONS

TO: Honorable Howard D. McKibben
Senior United States District Judge

FROM: Bill Reed
Asst. United States Attorney

SUBJECT: U.S. v. Sean David Follett
03:09-cr-0087-HDM- (VPC)

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
APR 28 2010	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY

I. **PLEA NEGOTIATION**

The defendant, SEAN DAVID FOLLETT, is charged in a Superseding Information filed April 22, 2010, with one count of Knowing Possession of a Stolen Firearm, in violation of Title 18, United States Code, Section 922(j). The Government and the defendant have agreed to the following:

1. The defendant will plead guilty to the Superseding Information, charging him with Knowing Possession of a Stolen Firearm, in violation of Title 18, United States Code, Section 922(j).

2. This plea is a binding agreement made pursuant to Fed. R. Crim. P. 11(c)(1)(C), 11(c)(3)(A), 11(c)(4) and 11(c)(5):

3. The parties agree that the Base Offense Level under U.S.S.G. § 2K2.1(a)(2) is 24.

4. Pursuant to U.S.S.G. §3E1.1(a) the United States will recommend that defendant receive a two-level adjustment for acceptance of responsibility unless defendant (a) fails to make a complete factual basis for the guilty plea at the time it is entered; (b) is untruthful with the Court; (c) denies involvement

Page 2
April 22, 2010

in the offense or provides conflicting statements regarding defendant's involvement; (d) attempts to withdraw the guilty plea; (e) engages in criminal conduct; (f) fails to appear in court; or (g) violates the conditions of defendant's pretrial release conditions.

5. In addition, under U.S.S.G §3E1.1(b), the Government will, in its sole discretion, make a motion for an additional one-level adjustment for acceptance of responsibility prior to sentencing if the defendant timely notifies the Government of his intention to plead guilty, thereby permitting the Government to avoid preparing for trial and allowing for the efficient allocation of resources.

6. The Parties agree that the United State Attorney's Office is not bound by the United States Probation Office's decision as to whether the defendant has accepted responsibility and it is understood that the United States Attorney's Office will make its own independent evaluation of this adjustment to the offense level.

7. The parties agree that the Offense Level and the possible Criminal History Category are based upon information concerning this offense and the defendant as it is known at the present time and could change based upon the investigation by the United States Probation Office and the findings of the District Court at the time of sentencing. Specifically, the parties have made no agreement concerning the defendant's prior criminal history, which will be determined by the Court.

8. As part of this binding plea agreement the parties agree and stipulate that the defendant shall be sentenced by the Court to a term of imprisonment for 120 months.

9. The defendant is also aware that Title 18, United States Code, Section 3742 gives the defendant a right to appeal the sentence to be imposed and that other federal laws give the defendant rights to appeal other aspects of his conviction. In exchange for the concessions made by the United States in the instant plea agreement, the defendant knowingly and expressly waives his right to appeal any sentence to be imposed that is within the applicable sentencing guideline range as determined by the Court, further waives his right to appeal the manner in which that sentence was determined on the grounds set forth in Title 18, United States Code, Section 3742, and further waives his right to appeal any other aspect of his conviction or sentence. Defendant also waives all collateral challenges, including any claims under 28 U.S.C. § 2255, to his conviction, sentence and the procedure by which the court adjudicated guilt and imposed

Page 3
April 22, 2010

sentence, except non-waivable claims of ineffective assistance of counsel.

10. The parties agree that no promises, agreements, and conditions have been entered into other than those set forth in this plea memorandum, and will not be entered into unless in writing and signed by all parties.

II. PENALTY:

Statutory:

Title 18, United States Code, Section 922(j) provides for a penalty of imprisonment for not more than 10 years and a fine of not more than \$250,000.

Sentencing Guidelines:

Offense Level 24

Criminal History Category II - 57-71 months
Criminal History Category VI - 100-125 months

Offense Level 21

Criminal History Category II - 41-51 months
Criminal History Category VI - 77-96 months

Pursuant to U.S.S.G. §5D1.2(a)(1), the term of supervised release imposed shall be at least 2 years, but not more than 3 years. Pursuant to U.S.S.G. §5D1.2(c), the term of supervised release imposed shall not be less than any statutorily required term of supervised release.

Pursuant to U.S.S.G. §5E1.2, a fine may be imposed and the advisory guidelines recommend the following: at offense level 24 the allowable fine range is between \$10,000 and \$100,000, at offense level 21 the range is between \$7,500 and \$75,000. The advisory guidelines also provide, however, that the Court may waive any fine, impose a lesser fine or an alternative sanction, such as community service, if a defendant establishes he does not have the ability to pay a fine.

Title 18, United States Code, Section 3663, and U.S.S.G. §5E1.1 permit restitution as deemed appropriate by the Court.

A mandatory special assessment under Title 18, United States Code, Section 3013, and U.S.S.G. §5E1.3 of \$100.00 for each count of conviction must be imposed.

Page 4
April 22, 2010

III. ESSENTIAL ELEMENTS OF OFFENSE:

Before a verdict of guilty as to Knowing Possession of a Stolen Firearm may be reached, the Government would have to prove the essential elements of the offense beyond a reasonable doubt as follows:

First: That the defendant knowingly possessed a firearm;

Second: That the defendant knew or had reasonable cause to know that the firearm was stolen; and

Third: That the firearm had at one time traveled in interstate commerce from one state to another.

IV. FACTUAL STIPULATION RELEVANT TO SENTENCING:

On or about July 15, 2009, the defendant met with an undercover agent from the Bureau of Alcohol, Tobacco, Firearms and Explosives in room 247 at the Vagabond Inn, Reno, Nevada. Thereafter, inside the motel room, the defendant sold the undercover agent a firearm identified as a Walther, model P22, .22 caliber semiautomatic pistol, serial number L140056. At the time the defendant possessed this firearm he knew it was a stolen firearm. An ATF interstate nexus expert has examined the firearm and determined that it was manufactured outside the State of Nevada. Therefore, the firearm has traveled in interstate commerce.

V. STATEMENT OF THE DEFENDANT:

I, SEAN DAVID FOLLETT, hereby acknowledge that I have thoroughly read and reviewed this memorandum with my attorney and agree that this memorandum completely and accurately states the facts supporting my plea of guilty and the negotiations between myself, my attorney, and the United States Attorney's Office. I have discussed the contents of this memorandum with my attorney and it has been explained to my satisfaction.

I have explained the facts and circumstances surrounding this case completely to my attorney and have been advised of what legal courses of action I might take. These discussions have included what might happen if I go to trial, what evidence the Government has against me, and the possible defenses, if any, I may have to these criminal charges.

My attorney has not promised me anything not mentioned in this plea memorandum and, in particular, my attorney has not

Page 5
April 22, 2010

promised that I will get any specific sentence. I understand that any discussions with my attorney about the possible sentence I might receive from the Court are just predictions and not binding on the Court. I know I cannot withdraw my guilty plea because my attorney's sentencing predictions turn out to be wrong.

My attorney has also explained to me my Constitutional Rights, including my right to a jury trial, to confront my accusers, to call witnesses on my own behalf, and my right to remain silent. My attorney has further explained to me that I have to waive these rights, that is, give them up, in order to have my guilty plea accepted by the Court.

I understand that the United States Attorney's Office will fully inform the Court and the United States Probation Office of the nature, scope, and extent of my conduct regarding the facts and circumstances of the charges against me, and any and all related matters in aggravation or mitigation concerning the issue of my sentencing.

I know if the Government is making a non-binding recommendation as to what type of sentence I should receive, the Court does not have to follow that recommendation. I also understand that I cannot withdraw my guilty plea because the Court decides to not follow the non-binding sentencing recommendation of the Government.

I further understand that the matter of sentencing is entirely up to the Court. Any stipulations or agreements between myself, my attorney, and the United States Attorney's Office are not binding upon the Court. I know the Court will decide my sentence based upon the facts of this case, my personal background, and the advisory Sentencing Guidelines. I fully understand that my sentence could be anywhere within the range set forth in Section II of this memorandum.

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Page 6
April 22, 2010

Finally, I understand that the decision to plead guilty or go to trial is mine alone. As stated above, I have discussed this case fully with my attorney and received legal advice about what is the best course of action that I should take. My decision after receiving this advice is to plead guilty under this agreement.

Sean Follett
SEAN DAVID FOLLETT

Date


VITO de la CRUZ
Counsel for defendant

Date